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October 18, 2011

**VIA ELECTRONIC FILING**

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

*Re: Closed Captioning of Internet Protocol-Delivered Video  
Programming: Implementation of the Twenty-First Century  
Communications and Video Accessibility Act of 2010,*  
**MB Docket No. 11-154**

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Dear Ms. Dortch:

On behalf of the National Court Reporters Association ("NCRA"), the national association representing individual captioners, we respectfully submit the following comments on MB Docket No. 11-154.

As noted in the *Notice of Proposed Rulemaking* ("NPRM") in this proceeding,<sup>1</sup> the *Twenty-First Century Communications and Video Accessibility Act* ("CVAA") mandates "closed captioning on certain video programming delivered using Internet protocol ("IP")" for the purpose of enabling "individuals who are deaf or hard-of-hearing to view IP-delivered programming."<sup>2</sup> It carries forward into the new century long-standing Congressional and Commission efforts to ensure that video information and programming is accessible to the 36 million Americans who are deaf or have hearing loss. As such, it is an important step towards keeping this vital and well-established public policy effective and relevant in serving the needs of the American people as the technologies, methods, and formats for video programming distribution continue to advance, expand, and multiply. NCRA strongly supports the Commission's efforts for full and timely implementation of the CVAA.

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<sup>1</sup> FCC 11-138.

<sup>2</sup> *Id.* at ¶1.

NCRA strongly supports the findings of the Video Programming Accessibility Advisory Committee (“VPAAC”) that the Commission’s regulations “should address caption completeness, placement, accuracy and timing.”<sup>3</sup> In short, the metric of success is whether the captions provided on covered IP-delivered programming succeed in making the full meaning of that content accessible and understandable to persons who are deaf and hard-of-hearing.

This includes technical issues involved in the delivery of captioning content, such as requiring that: “[n]othing must be lost in transcoding when converting captions between conventional broadcast captioning formats and the Internet;”<sup>4</sup> that “the positioning information as originally authored shall be made available to the consumer device;”<sup>5</sup> and that “[a]ll processing through the distribution chain, including transcoding, must provide a timing experience that is equal to or an improvement to the captions provided in the captioning shown on television.”<sup>6</sup>

This also includes issues as to the quality, completeness, and accuracy of the captioning text itself and a requirement that the quality of IP-delivered captions be “equal to or greater than the accuracy of the captions shown on television.”<sup>7</sup>

In short, it is NCRA’s firm belief that allowing any compromise or degradation in the efficacy of closed captions as an assistive technology for IP-delivered video programming would fail to meet the Congressional mandate in the CVAA and be a grave disservice to American society and especially to the 36 million deaf or hard-of-hearing consumers for whom the CVAA was designed.

The NPRM notes the concerns of some video programming distributors and providers that “they would be unable to provide captions that are ‘better than’ those available on television because improving captions would violate the VPO’s [video program owner’s] copyright.”<sup>8</sup> NCRA takes strong issue with this. “Protecting” VPO’s intellectual property rights by rigorously preserving as inviolate substandard captions that fail to accurately convey the copyrighted programming content defies logic and common-sense. Moreover, it raises questions as to whether the VPO/VPP<sup>9</sup>/VPD<sup>10</sup> met their original obligations under

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<sup>3</sup> See VPAAC Report at 4.

<sup>4</sup> See *id.* at 13.

<sup>5</sup> See *id.* at 13-14.

<sup>6</sup> See *id.* at 14.

<sup>7</sup> See *id.*

<sup>8</sup> NPRM at ¶19.

<sup>9</sup> VPP: video program provider.

<sup>10</sup> VPD: video program distributor.

prior Commission rules as to the quality and accuracy of the captions that were provided in the original broadcast or distribution of the programming.

The legislative intent of the CVAA was to ensure that all previously broadcast programming on the Internet is effectively closed captioned such that accessibility is achieved. This intent is thwarted when inadequate captions are merely carried forward to the Internet from traditional broadcast, cable, and satellite distribution.

This is a serious issue, which broaches on the larger general concern of captioning quality.

Although caption quality can be affected by a wide variety of technical problems that have nothing to do with the actual ability or performance of the closed captioner or the accuracy of the captioning text delivered to the program originator, the absence of reasonable, objective, and uniformly applied standards as to the quality of captioning content itself, even in the area of traditional television broadcast, has yet to be adequately addressed by this Commission.

Captioning quality can be influenced by a number of considerations, such as the nature of the programming (live or pre-recorded and open to post-production editing and improvement), audio quality, the number of speakers, the accent(s) of speakers, among other items. Indeed, the program provider's cooperation in advance of live events, which must be captioned in realtime, can make or break the captioner's ability to provide accurate captions.<sup>11</sup>

Although captioning quality is not an absolute that can be measured with mathematical precision with a single standard applied to all programming, regardless of its nature, the establishment of nuanced, practical, and objective standards is possible. The failure to establish such captioning quality standards even in the traditional broadcast, satellite, and cable television fields, as evidenced by the continued flow of consumer complaints to the Commission, is an injustice to the millions of Americans who rely on captions as an assistive technology for the purposes of access. The current proceeding will merely exacerbate the matter by extending and perpetuating this fundamental problem into new media.

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<sup>11</sup> Too often, and without realizing they are doing so, the program provider sabotages their own efforts to provide quality captions. The ability of a realtime captioner to deliver quality captions is greatly enhanced if he or she has the cooperation of the program provider. Providing the captioner information in advance of the broadcast (such as information about the subject matter, proper names, or specialized or unusual jargon or terminology that is likely to come up) enables the captioner to be prepared to meet quality expectations. Too often, however, program providers simply deliver the programming feed with absolutely no advance warning of its nature or content, making the captioner's already difficult job all but impossible.

In this regard, NCRA renews its request that the overarching issue of captioning quality be addressed.<sup>12</sup> NCRA has previously proposed that a working group, made up of captioners, the companies that employ them, program providers, and consumers be created to reach agreement on general principles and develop meaningful standards regarding captioning quality to be jointly proposed to the FCC.<sup>13</sup>

The Commission proposes to create a process by which VPPs and VPOs may petition the Commission for full or partial exemptions of the captioning obligations on their IP-delivered programming “comparable to the Commission’s procedures for exemptions based on undue burden applicable to our television closed captioning rules.”<sup>14</sup> NCRA strongly urges that the Commission *not* entertain any proposals to weaken or make the showings necessary for such exemption less stringent than those currently applied to television programming. There is ample and readily available technology which can ensure that the closed captions that were delivered over the airwaves are accurately synced and placed online once the video is made available.

NCRA concurs with the Commission’s conclusion that “it does not appear that categorical exemptions found in the television closed captioning rules are applicable”<sup>15</sup> to IP-delivered programming.

Regarding the mechanism for ensuring that VPPs and VPDs are made aware of video programming subject to CVAA captioning requirements,<sup>16</sup> NCRA urges the Commission to maximize the transparency and accessibility of such mechanisms and to ensure that consumers are able to remain informed.

Regarding procedures for the filing and the resolution of complaints alleging a violation of the IP-delivered closed captioning requirements, NCRA urges the Commission to promulgate rules that provide consumers with as direct and simple a process as possible for making VPPs/VPDs aware of captioning failures so that simple issues can be resolved promptly.<sup>17</sup> The intent should be to support as immediate a remediation as possible, as

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<sup>12</sup> See National Court Reporters Association “Notice of Ex Parte Communications in CG Docket 05-231,” March 28, 2011.

<sup>13</sup> NCRA also reiterates its position that performance standards should be applied uniformly and equally, regardless of technology used to create the captions; its strong support for the certification of captioners; and that standards of practice and systems be put in place that allow for continuous monitoring of broadcasts and timely correction of captioning problems when and where they occur.

<sup>14</sup> See NPRM at ¶30.

<sup>15</sup> See *id.* at ¶32.

<sup>16</sup> 47 U.S.C. § 613(c)(2)(D)(v).

<sup>17</sup> This is another area where existing processes under the television closed captioning rules remain inadequate and could be improved.

close to the source of the problem as possible, and to avoid FCC, consumer, and VPP/VPD engagement in prolonged and costly proceedings.

NCRA commends the Commission for their serious and aggressive efforts to implement and enforce the CVAA, thereby extending accessibility services that are critical to millions of Americans to new media.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'M. Golden', with a stylized flourish at the end.

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